

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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CECILIA NICHOLAS,

Plaintiff,

**ATTORNEY AFFIDAVIT**

-VS-

CITY OF BINGHAMTON, NEW YORK, and  
Binghamton Police Officers CHARLES  
HARDER, JAMES MOONEY, CAPT.  
JOHN CHAPMAN, and CHIEF JOSEPH  
ZIKUSKI,

**3:10-CV-1565**

**TJM/DEP**

Defendants.

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STATE OF NEW YORK     )  
                                      ) .SS:  
COUNTY OF BROOME     )

Patricia A. Cummings, Esq., being duly sworn, deposes and says:

1. I am a member of the law firm of Leonard & Cummings, LLP, attorneys for the defendant officers Charles Harder, James Mooney, Capt. John Chapman and Chief Zikuski. I am fully familiar with the facts and circumstances of this action.

2. I make this affidavit in opposition to the plaintiff's motion to compel and to extend the discovery deadline.

3. On May 20, 2011, a Uniform Pretrial Scheduling Order was issued. The scheduling order established the discovery cutoff date as March 1, 2012.

4. On July 26, 2011, plaintiff served a discovery demand for documents and things. As the attorney for the individual officers, counsel is not in possession of the requested items. Further, upon information and belief, plaintiff's Counsel was notified that upon completion of a protective order

signed by the Court, Counsel for the defendant City of Binghamton, would provide the requested documents.

5. On February 6, 2012, plaintiff served interrogatories on defendant Officer Charles Harder.

6. On February 21, 2012, plaintiff served interrogatories on defendant Officer John Chapman.

7. On February 22, 2012, plaintiff served interrogatories on defendant Chief Joseph Zikuski.


8. On February 28, 2012, counsel for the individual defendant officers received a motion to compel the defendants to respond to the plaintiff's interrogatories.

9. As discussed further in defendants' memorandum of law, the plaintiff's motion to compel should be denied. It is respectfully submitted that the plaintiff did not timely serve the interrogatories to which she is seeking answers and has moved to compel within seven days of service of the interrogatories.

WHEREFORE, it is respectfully requested that this Court deny the plaintiff's motion to compel the defendants to respond to plaintiff's interrogatories and deny plaintiff's motion to extend the discovery deadline for an additional thirty days.

Subscribed and sworn to before me  
this 8th day of March, 2012.

  
Notary Public

  
PATRICIA A. CUMMINGS

DEBRA L. SMITH  
Notary Public, State of New York  
Residing in Broome County  
My commission expires January 31, 20 14

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

Civil Action No.  
3:10-CV-1565

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-vs-

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ZIKUSKI,

Defendants.

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***DEFENDANT OFFICERS MEMORANDUM  
OF LAW IN OPPOSITION TO PLAINTIFF'S  
MOTION TO COMPEL AND IN OPPOSITION  
TO PLAINTIFF'S MOTION TO EXTEND  
THE DISCOVERY DEADLINE***

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***LEONARD & CUMMINGS, LLP***

Patricia A. Cummings, Esq.  
Bar Roll No. 301651  
Defendant Police Officers  
84 Court Street, Suite 402  
Binghamton, New York 13901  
Telephone (607) 772-9262

**TABLE OF CONTENTS**

	<u>Page</u>
ARGUMENT.....	1
Plaintiff's Motion To Compel Should Be Denied As Frivolous	
CONCLUSION.....	2

**TABLE OF CITATIONS**

	<u>Page</u>
FRCP 33(b)(2) .....	<u>1</u>
NDNY Rule 16.2 .....	1

**ARGUMENT**

***Plaintiff's Motion To Compel  
Should Be Denied As Frivolous***

Federal Rule of Civil Procedure 33(b)(2) and Northern District of New York Rule 16.2, articulate the use of interrogatories and the discovery cutoff date, respectively.

More specifically, Federal Rule of Civil Procedure 33(b)(2) articulates that the responding party is entitled to thirty days after being served with the interrogatories, within which to respond; NDNY R. 16.2 mandates that all responses to all written discovery must be served by the discovery cutoff date.

In this case, where the discovery cutoff date was March 1, 2012, plaintiff served interrogatories for defendant Officers on February 6, 2012, February 21, 2012, and February 22, 2012. As such, none of her interrogatories were timely served.

Despite plaintiff's untimeliness, counsel has been making every effort to respond to those interrogatories, which were received on February 6, 2012. Counsel met with Officer Harder on February 15, 2012, in order to prepare the interrogatory responses.

Counsel reviewed Officer Harder's personnel files on February 22, 2012. Counsel drafted proposed responses for Officer Harder's signature on February 28, 2012.

Officer Harder signed the interrogatory responses on March 9, 2012, and copies of those interrogatory responses were mailed to plaintiff on March 9, 2012.

Regarding the remaining interrogatories, Counsel was served with a motion to compel dated February 27, 2012, seeking responses not only to the February 6, 2012 interrogatories but also the February 21, 2012 and February 22, 2012 interrogatories. The plaintiff's motion to compel which is brought within days of service of the



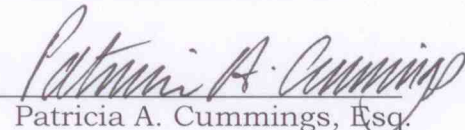
Interrogatories to which she seeks a response, is frivolous on its face and does not entitle plaintiff to an extension of the discovery deadline.

**CONCLUSION**

The plaintiff's motion to compel the defendant officers to respond to her untimely interrogatories should be denied as frivolous and the discovery cutoff date should not be extended.

Dated: March 6, 2012  
Binghamton, New York

LEONARD & CUMMINGS, LLP

By:   
Patricia A. Cummings, Esq.  
Bar Roll No. 301651

Defendant Police Officers  
84 Court Street, Suite 402  
Binghamton, New York 13901  
Telephone (607) 772-9262

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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Defendants.

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**CERTIFICATE  
OF SERVICE**

**3:10-CV-1565**

**TJM/DEP**

I hereby certify that on the 9<sup>th</sup> day of March, 2012, I electronically filed the foregoing Attorney Affidavit and Memorandum of Law in opposition to plaintiff's motion to compel with the Clerk of the District Court using the CM/ECF system, which sent notification of such filing to the following:

City of Binghamton  
Brian Seachrist, Esq.  
Bar Roll No.: 302695  
Counsel for the City  
City Hall, 38 Hawley Street  
Binghamton, NY 13901

  
Debra L. Smith



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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-VS-

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ZIKUSKI,

Defendants.

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**AFFIDAVIT OF  
MAIL SERVICE**

**3:10-CV-1565**

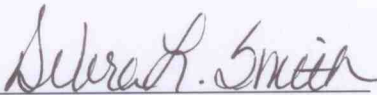
**TJM/DEP**

STATE OF NEW YORK    )  
                                  )SS:  
COUNTY OF BROOME    )

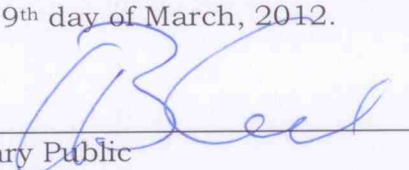
Debra L. Smith, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides in Windsor, New York. On March 9, 2012, deponent served the within Attorney Affidavit and Memorandum of Law in opposition to plaintiff's motion to compel upon:

Cecilia Nicholas  
Plaintiff, Pro Se  
52 Lathrop Avenue  
Binghamton, NY 13905

at the address designated by said attorney for that purpose by depositing one true copy of same enclosed in a post-paid, properly addressed wrapper, in official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
Debra L. Smith

Subscribed and sworn to before me  
this 9<sup>th</sup> day of March, 2012.

  
Notary Public

HUGH B. LEONARD  
NOTARY PUBLIC, STATE OF NEW YORK  
RESIDING IN BROOME COUNTY  
MY COMMISSION EXPIRES JUNE 16, 2013